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DECISION MAKING IN THE REDISTRICTING PROCESS: APPROACHING FAIRNESS

*Frank J. Macchiarola**

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I. INTRODUCTION

The following article was written by teaching lawyers who have participated in the redistricting process of the New York City Council.¹ They participated, not as academic consultants to the particular redistricting, but, as integral members of the process from start to finish. As Chair of the 1990 New York City Districting Commission² ("Commission"), Professor and Dean Frank J. Macchiarola was primarily responsible for overseeing the districting of an enlarged City Council for New York City. This enlargement included both numerical size and governmental authority of the council, the City's newly constituted sole legislative branch. Assisting the Commission throughout this process as Deputy Counsel was Joseph Diaz.

Because of unusual circumstances that put academics at the center of a process usually deferred to legislators, this article will depart from the traditional perspective and style of academic writings concerning redistricting. While a theoretical perspective runs throughout the article, it is not a customary one. The authors are in a position to weave into the article considerations not generally experienced by other redistricting authors. Local political realities and public policy considerations were not simply analyzed; they were participated in. However, this is not a "how to" piece: the authors do not address the legal issue of how to draw districts that will best satisfy the needs of local communities as well as pass scrutiny under the Department of Justice's guidelines. The authors hope to present a practical and realistic picture of the redistricting process as set in New York City's local political scene.

State and local redistricting has been the subject of a great deal of writings and study. Many disciplines, such as law, political science, and history have focused on redistricting. While these writings say a great deal, they are generally classified into one of three categories. The first group is descriptive history. This

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1. This article evolved from a conference on Urban, State and Local Government Reapportionment in which Dean Macchiarola participated as a panelist. He presented this discussion at the annual meeting of the Association of American Law Schools in San Antonio, Texas earlier this year. It has been expanded to provide a clearer presentation to the reader.

2. The Districting Commission's authority, duties and composition are controlled by Chapter 2-A of the New York City Charter, a copy of which is attached hereto as Appendix A.

body of work reviews the history of redistricting and the relevant laws. They capture the flavor of blatant "gerrymandering" during a time when legal remedies did not exist for those who felt aggrieved. Regarded as a "political question," redistricting was not addressed by courts. More modern essays attempt to explain the role played by the law in this area, especially with regard to racial politics, the Voting Rights Act and its Amendments,³ and discuss issues raised and outcomes of lawsuits that have emitted from the law of voting rights.⁴

The second type of writings encompasses specific discussions of single issues or narrow aspects of voting rights, the Voting Rights Act, a particular lawsuit or series of lawsuits, or presents detailed guidance on how to satisfy federal, state and local criteria.⁵ Customarily, these articles present more thorough analyses of specific facets of redistricting, elections and voting rights. They also focus on how the case law has developed the entitlements of disenfranchised or aggrieved citizens.⁶

The third and most recent category of writings includes critiques of the Voting Rights Act within the purview of redistricting, laws controlling registration and nominating procedures, and laws regulating specific systems of representation, such as "at large" election districts or single member districts. The authors of these writings, from both the political left and right, often argue for alternative solutions, such as abolishing the Voting Rights Act, or the creation of new systems of representation. Several recent articles have suggested a semi-proportional voting scheme, known as single transferable voting, as an alternative to the present single member district schemes used by an overwhelming majority of the states and localities.⁷

In this article, the authors take a somewhat novel approach to discussions of redistricting. By openly examining their experience with the local redistricting of the New York City Council, the authors shed light on the actual process of redistricting. They maintain that the process contains significant aspects other than those of law, government and politics. It is, or should be seen as, a more

3. 42 U.S.C. §§ 1971-74 (1988).

4. See generally BERNARD GROFMAN ET AL., *MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY: A SOCIAL SCIENCE PERSPECTIVE* (1992); BERNARD GROFMAN, *VOTING RIGHTS, VOTING WRONGS: THE LEGACY OF BAKER V. CARR* (1990); FRANK R. PARKER, *BLACK VOTES COUNT* (1990); ABIGAIL THERNSTROM, *WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS* (1987); *MINORITY VOTE DILUTION*, HOWARD UNIVERSITY PRESS, (Chandler Davidson ed. 1984).

5. For a comprehensive overview of recent and unresolved voting rights issues, see M. David Gelfand, *Symposium Overview - Voting Rights Development: Academic Reflections and Practical Projections for the 1990s*, 21 STETSON L. REV. 707 (1992).

6. See, e.g., BERNARD GROFMAN ET AL., *IDENTIFYING AND REMEDYING RACIAL GERRYMANDERING* (1991); BERNARD GROFMAN, *POLITICAL GERRYMANDERING AND THE COURTS* (1990); Sushma Soni, *Defining the Minority Preferred Candidate Under Section 2 of the Voting Rights Act*, 99 YALE L. J. 1651 (1990); James U. Blacksher, *Drawing Single Member Districts to Comply With the Voting Rights Amendments of 1982*, 17 URB. LAW 347 (1985); Bernard Grofman et al., *Representation and Redistricting Issues* 173, 185 (Scarrows eds., 1982).

7. See, e.g., Judith Reed, *Of Boroughs, Boundaries and Bullwinkles: The Limitations of Single-Member Districts in a Multi-racial Context*, 19 FORDHAM URB. L. J. 759 (1992); Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 MICH. L. REV. 1077 (1991); Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 HARV. C.R.-C.L. L. REV. 173 (1989); Pamela S. Karlan, *Undoing the Right Thing: Single Member Offices and the Voting Rights Act*, 77 VA. L. REV. 1, (1987).

complete process — one that includes aspects of business and education, as well as notions of “fairness” that address matters usually beyond the law. This article discusses some of the major policy considerations involved in the districting process for the New York City Council. It also discusses the interaction of law and politics that underscored many significant decisions made by the Commission. It seeks to explain how the Commission arrived at these decisions in spite of the sometimes incongruous ideas and concerns of individual commissioners.

Section two expands on some of the ground rules that the Chair of the Commission set at the start of the Commission’s work. The ground rules set the tone and momentum under which the Commission operated. Section three considers the structure devised by the 1989 Charter Revision Commission for the fifteen-member Districting Commission. That structure set requirements and priorities, but also provided for flexibility and judgment. Section four discusses the significant policy deliberations and decisions in the Commission’s districting process. Section five deals with some of the decisions made by the Commission that were made primarily for minority empowerment. Finally, section six concludes that a fair result can be achieved if the Commission is faithful to the process.

II. THE POWER OF THE CHAIR IN SETTING BOUNDARIES: REALISTIC GOALS OF POLITICAL FAIRNESS AND THE LAW

The overriding consideration of the chief decision-makers in this process was that the Commission do what was “right.” The right thing, or long term objective, envisioned the Commission producing a fair plan that was faithful to the requirements of the New York City Charter — which included as its first and second criteria, respectively, fidelity to the one person, one vote requirement⁸ and that the plan comply with the requirements of the Voting Rights Act.⁹ In addition, the Commission also needed to satisfy the political community in which it operated. Considering all the political workings invariably contained in the redistricting process, this last objective was easier said than done.

The most general sense in which the Commission strove for a “fair” result was with the idea that an expanded Council (from thirty-five to fifty-one members) would provide at least sixteen new opportunities for representation. The Commission actively sought to identify and define communities that previously had been submerged within the larger political groupings. This meant listening carefully at public hearings of the Commission and responding to the testimony. As a result, a view of who was left out of the political process emerged. The Commission considered the traditional categories of excluded minorities based upon the views and attitudes of elites, those used to describing political reality for the rest of us. However, the Commission hearings brought a different perspective to the process. The Commission saw that in order to enfranchise within the mandate it had, it had to go beyond the more traditional litany of minorities. Like an intricate puzzle, it took thousands of pieces of testimony to put the plan together. The open process had a decided impact. Those who asked

8. NEW YORK CITY, N.Y., NEW YORK CITY CHARTER ch. 2-A, § 52(a) (1989).

9. CITY CHARTER ch. 2-A, § 52(b).

for empowerment often received it, including Caribbean Blacks, Dominican Hispanics, gays and lesbians, emerging communities within larger neighborhoods, and even Republicans, whose number on the City Council increased from one to five after the process was completed. In sum, what the Commission endeavored to do was to enhance the local political process so that its beneficiaries would be those who could present their claim for political representation. A simple yet integral part of that endeavor meant granting people the opportunity to be heard and taking what they said to heart.

Obstacles abounded, especially because individual members of the Commission had been chosen with due consideration of their own agendas. The chair's working theory was that a highly diverse and capable group of concerned city residents needed to be brought together to achieve a new level of openness and inclusion in the local political process. While actions of individual members of the Commission did not always reflect this theory, the chair strove to keep coalitions from forming on the Commission by working constantly at the process in the way called for by the New York City Charter. Working at tasks, such as using the computer in a "hands-on" manner, built confidence among members and the integrity of the body itself. Mutual respect was a constant and no one was excluded, even though, by the end of the process, a substantial majority had well-founded views of who had behaved in ways that might have warranted exclusion.

Those members who could not see the agenda of the Commission in terms of the general good basically excluded themselves by their own refusal to participate with open minds. By tending to the task at hand, the Commission did not get mired in the many factional issues raised by the various lawsuits filed¹⁰ and the constant media attention to issues and events extraneous to the creation of a successful districting plan.

The Commission leadership viewed the process as an education for members of the Commission. The Chair, for example, used his experiences as a professor in several disciplines to infuse a variety of perspectives into defining the task at hand for the Commission.¹¹ His experience as a professor of business gave him a good sense of organization and the need to have systems in the process of adopting the plan. This skill helped immensely in terms of early staffing, creating an organizational structure, securing an appropriate budget, obtaining space, securing and testing sophisticated computer equipment, and working back from the deadlines by adopting appropriate milestones. To appreciate the enormity of this task, one need only consider the failure of the New York State Senate and Assembly to agree on a congressional districting plan. After more than two years of trying to create a plan politically palatable to both houses of the state's legislature, with an expenditure measured by millions of dollars, they reached a stalemate with no compromise in sight. In that situation, many former members of the Commission, including both authors, the two Vice-Chairs of the Com-

10. Several of these lawsuits are noted and briefly discussed *infra* in Part V.

11. Frank J. Macchiarola has been a Professor of Business at Columbia University, Professor of Political Science at the Graduate Center of the City University of New York, Professor of Education at the Teachers College at Columbia University and Adjunct Professor of Public Administration at Baruch College of the City University of New York.

mission,¹² as well as the former Executive Director, were called in by the State Supreme Court to do that job. They accomplished it in approximately two weeks, using much of the key personnel and techniques that were used in the New York City Council districting at a cost of approximately \$200,000.

The Chair had also served as Chancellor of the New York City Public Schools. This experience gave him the sense that the process of districting itself was also about teaching one another as they advanced toward the goal. Keeping an open mind, one willing to listen and be educated, was part of the responsibility of the Commission and its chair. Fundamentally, most of the fifteen commissioners who participated in the process emerged as different people as a result of the education they gained on the Commission. Significantly, those members who voted against the final plan were, as is discussed below, "single issue" Commissioners who would not compromise on particular issues, or who had "bottom line" commitments that they could not compromise. The Commission plan had to proceed from what it learned. Going into the process there could be no absolutes. Fidelity to the process did not permit it.

As a practitioner and professor of law, the fidelity to a system of rules imposed upon the Commission by law was extremely important to the Chair. While the Chair believed that the Voting Rights Act had been carried out beyond the point it should have by the case law and practice, resulting in extreme gerrymandering in some cases, the Chair was committed to applying the law as best it could be determined. The Voting Rights Act has not always been clearly interpreted, and several questions regarding its application remain "open," particularly as relating to New York City's many minorities. Nevertheless, the Chair had to adopt a posture requiring the Commission to deal with the legal issues, and not forward them to the judiciary. It was, the Chair believed, incumbent on public officials who take an oath to abide by the law not to excuse themselves from this oath of office by having judges do their work. In short, the Chair did not always agree with the law nor would he have necessarily followed the same process it required. Still, the Commission maintained fidelity to the law the same way that lawyers tell their clients that they have to pay taxes that the tax code provides for, even though one may not agree with the tax code.

Finally, there were city-wide political contacts and associates the Chair had established. As head of the New York City public school system from 1978 to 1983 and, later, in his run for City Comptroller in 1989, the Chair had developed political contacts and some credibility with many politicians. He used those contacts for informal discussions about the Commission's work and the expectations that many had about its results. The Commission had to get its work and problems understood so that its final plan could be judged in those terms. The Commission had to set the stage for the evaluation and acceptance of its results.

In sum, it was to the Chair's advantage, as the leader of the Commission, to build as much confidence in the Commission and its work as he could in the

12. Esmeralda Simmons, who served as one of the two Vice Chairs on the Districting Commission, was originally enlisted to act as one of the three redistricting experts to the team of Referees who were assembled by the State Supreme Court to draw the State's congressional districts. However, she opted instead to serve as legal counsel to one of the parties in the various lawsuits that this process spurred.

public at large, the "influentials," the academics and law professionals, and even the media. He wanted to show these groups what the Commission planned to do, that its goal was an open one, subject to change when needed, and to allow them to play a role in the development of this plan. Part of this desire meant the Commission consistently met with community leaders, people representing political interests, public interest groups, and often, representatives of the media to explain the Commission's job. Even though the New York City Charter itself provided that the Commission would approve and adopt a plan without interference from the City Council,¹³ the Chair still felt the requirement of consensus beyond the scope of the fifteen members of the Commission. To take a different approach, that is, to somehow satisfy the political agendas of the fifteen individual commissioners,¹⁴ would not only have resulted in a dramatically different plan; it would have resulted in the type of plan that the Charter Revision Commission — which articulated the criteria by which the Commission had to create a plan — desired to prevent.

III. NEW RULES FOR NEW RESULTS

Since the process involved creating an entirely new plan for city council representation, the 1989 Charter Revision Commission (the "Schwarz Commission") had the forethought to call the Commission a "districting" as opposed to a "redistricting" commission. This name reflected the fact that not only would the Commission consider the U.S. Census in drawing new lines for council districts, but perhaps more importantly, the Commission was charged with specifying the communities to be empowered by the change in the legislative functions of the council.

Under the revised New York City Charter, the council had become the city's sole legislative body, replacing the formerly powerful Board of Estimate in several of its key functions, including land use, franchise, and contract matters.¹⁵ As a result of the invalidation of the Board of Estimate, the Schwarz Commission increased the size of the City Council to empower minority communities. This New York City Charter made this charge explicit and required in its ranked criteria the "fair and effective representation of minorities."¹⁶ This goal was second only to the one person, one vote requirement.¹⁷

The Schwarz Commission also delineated other criteria to be used in creating districts.¹⁸ These criteria included neighborhoods and communities,¹⁹ political affiliations,²⁰ and a limit on borough crossings in the creation of multi-county

13. This power reverts to the council in 1993. CITY CHARTER ch. 2-A, §§ 51(c) & 51(d).

14. The Commissioners were, after all, political appointees. This matter is discussed later in this article.

15. In *Board of Estimate v. Morris*, 489 U.S. 688, 702 (1989), the U.S. Supreme Court, affirming decisions below, ruled that the Board of Estimate, a quasi-legislative body that existed alongside the City Council, violated the equal protection clause of the fourteenth amendment. The Court based its ruling on the fact that the Board's composition and voting structure violated the one person, one vote requirement. Each Borough President had one vote on the Board despite the fact that the populations and proportions of minorities of each borough varied considerably.

16. CITY CHARTER ch. 2-A, § 52(1)(b).

17. CITY CHARTER ch. 2-A, § 52(1)(a).

18. CITY CHARTER ch. 2-A, § 51(a)-(g).

19. CITY CHARTER ch. 2-A, § 52(1)(d).

20. CITY CHARTER ch. 2-A, § 52(1)(f).

districts.²¹ The Commission adhered to the criteria in their listed order, as the Charter required.²²

The use of an independent committee made the process more elaborate than prior redistrictings. Being "independent" meant that once the City Council and Mayor had appointed the representatives, as is discussed below, the City Council and Mayor lost control of the process. Of course, the process was more complicated than that, and both council members and people connected with the mayor's office had lines into the Commission's work. Still, the Commission was free from more direct influence that past New York City Charters had provided for in the redistricting commissions they established. On some of these commissions, virtually all the members were mayoral appointees. On others, the commission was essentially advisory and the Council adopted the final districting map.

The Schwarz Commission attempted to ensure independence by structuring the Commission in a diverse and politically balanced manner. Of the fifteen unpaid Commissioners, eight were to be appointed by the Council and seven were to be appointed by the Mayor. Of the council appointees, five were to be appointed by the majority party, the Democrats, and three were appointed by the minority party.²³ The mayoral appointees were also required to be politically diverse in that the Mayor could not create a Commission with a majority (eight) of its members belonging to any one party. This Charter requirement resulted in a Commission consisting of seven Democrats, five Republicans, a Liberal party member, a member of the Conservative party, and an independent member.

As to who would chair the Commission, the usual practice of partisan selection was not possible, because the Charter prohibited a majority of any one party. Indeed, only seven Democrats on a fifteen person Commission in New York City was quite an extraordinary event. The departure from the traditional political structure was also exhibited in the racial/ethnic/gender/geographic breakdown of the Commission. A majority of its members were non-white; the Commission included four African American Commissioners, three Hispanic Commissioners, and one Asian American Commissioner.²⁴ The Commission also included five women. Geographically, as among the City's five boroughs, five members were from The Bronx, two were from Staten Island, four were from Brooklyn, two were from Queens, and only two were from Manhattan. Again, these features set the Commission far apart from the City's prior practices.

In addition, the Commission abandoned the customary voting protocol in the hope of achieving "fairer" results. The New York City Charter sought fairer results by requiring that the Commission had to adopt its plan by a super-majority.²⁵ This required nine members voting affirmatively for the Commission's

21. CITY CHARTER ch. 2-A, § 52(1)(c).

22. CITY CHARTER ch. 2-A, § 52(1) ("The following paragraphs [listing the criteria] shall be applied and given priority in the order in which they are listed.").

23. CITY CHARTER ch. 2-A, § 50(a)-(g).

24. The City Charter required this racial and ethnic diversity. CITY CHARTER ch. 2-A, § 50(b)(1)(b). "The commission shall have among its members . . . members of the racial and language minority groups in New York City which are protected by the United States Voting Rights Act of nineteen hundred and sixty-five, as amended, in proportion, as close as practicable, to their population in the city." *Id.* See *infra* note 47.

25. CITY CHARTER ch. 2-A, § 51(g).

plan to be adopted.²⁶ Given the diversity of the Commissioners, the fact that eleven members voted to adopt the final plan attested to its broad support.

The Charter required the Commission to elect one of its members to serve as chair of the Commission.²⁷ There was also a battle for the chair, but eventually Frank J. Macchiarola was elected by a vote of eight to six. As an accommodation to other blocs, the Commission also elected two vice-chairs. To maintain the balance on the Commission, a Democratic mayoral appointee and a Republican council appointee were elected unanimously as the vice-chairs. From that point, part of the Chair's personal authority was at risk, but necessarily so because of the kind of leadership that would be required to accomplish the task. "Power of the chair" issues arose immediately. Who would be the executive director? Who would be on the staff? The Chair turned to the work of the Charter Revision Commission. That Commission had vested the power in the Chair, subject to recommendation by the Commission. The Chair urged the members to adopt that method for the Commission and was granted the authority to make staffing and other significant decisions. This meant that the Commission was less likely to get bogged down in personal or political controversy.

Finally, the Schwarz Commission created a timetable from which the Commission had to work backwards.²⁸ It was an incredible timetable. The City Council had a November 1991 election date and a September 1991 primary. The final plan for the districts had to be submitted for Department of Justice approval in early June.²⁹ However, the Commission did not expect to receive the 1990 census data until approximately three months earlier, in March of 1991. Within that short period, the Commission had twenty-seven public hearings in all five boroughs and hundreds of meetings with concerned community groups throughout New York City.

In its relatively short life span as a governmental agency, the Commission also had to acquire the technology and expertise for computer-based redistricting. In this regard, given the ten year gap in redistrictings and the early election that required districting, the Commission helped set the standard for both state and local redistrictings and reapportionment that were soon to follow. Technology and its application were not where the Commission needed it to be — a real assault on this kind of a problem had not occurred since 1980 — so the Commission lacked the required technology at the time the Commission was created. All of that work had to be done, and was in fact accomplished on schedule. The Chair knew the Commission would never finish all of its work on time if assertive leadership was not used from the start, long before most realized the time for rapid action had arrived.

IV. DEVELOPING A FAIR PROCESS: POLICY DECISIONS ON THE COMMISSION

The Commission viewed the work before it as a set of problems or issues that it had to resolve. The first and foremost was keeping the process fair.³⁰ As

26. CITY CHARTER ch. 2-A, § 51(g).

27. CITY CHARTER ch. 2-A, § 50(a)(6).

28. CITY CHARTER ch. 2-A, § 51(c)-(g).

29. CITY CHARTER ch. 2-A, § 51(1)(c).

30. CITY CHARTER ch. 2-A, § 52(1)(b).

noted earlier, that the process produced a fair result can be gleaned from the diversity of the council elected in November of 1991: going into this process, twenty-five percent of the council was minority. That figure rose to forty percent after the election. At the same time, some disappointing results occurred as well. The Commission was clearly frustrated by the fact that although seven percent of the City's population is Asian, the Asians could not have that strength reflected through redistricting. The demographics could not support a predominantly Asian district, although the entire Commission had worked extremely hard to find a way of producing that result.³¹

Nonetheless, fairness in the results and adherence to the rules were the focus of the Commission's work. As indicated above, the Charter had established those rules and the Commission had the obligation to operate within them.³² Fairness also had to be defined by the Department of Justice, which would have to approve the plan before it could be implemented.³³ Indeed, nothing the Commission could have done would have immunized it from the criticism that its final plan would generate from the Justice Department. When the Justice Department first turned down the plan, based on minor failures to conform to the Voting Rights Act, the Commission's leadership felt strongly that its reasons for doing so had been inappropriately based on satisfying long term political aspirations. Still, the leadership did not let pride or exasperation get in the way of having an approved districting plan for New York City on schedule. Rather than comment, the defects were cured within a week and in the end, the Commission had created a plan that the Department of Justice approved.

A. Members of the Commission

Four professors led the Commission: besides the Chair, who was teaching at Columbia University, Vice Chair Esmeralda Simmons taught at Medgar Evers College at the City University of New York ("CUNY"), Vice Chair Michael Petrides was a professor at Staten Island College, also part of CUNY and the Commission's Executive Director, Dr. Alan Gartner, was head of research at the Graduate Center of CUNY. Commissioner Simmons came with an extensive background in the voting rights area, having been lead and co-counsel on a number of significant voting rights matters. Commissioner Petrides was, and remains, a member of the New York City Board of Education. He was also active in Republican party politics. Finally, Dr. Gartner had experience in the civil rights arena, marching in Selma, Mississippi three decades earlier.

In addition to these people, the Commission made it a policy to look for outside experts in the areas of redistricting and voting rights. Notable experts included Professor Bernard Grofman of the University of California; Professor Lani Guinier of the University of Pennsylvania; Professor Robert Bailey of Columbia University; and Professor John Mollenkopf, a political scientist from the Graduate School of the City University of New York. In addition, Judith Reed, of the NAACP Legal Defense Fund, was retained as Counsel. The

31. The Asian population in New York City was too dispersed to allow the Commission to create an "Asian Majority" district.

32. CITY CHARTER ch. 2-A, § 52.

33. 42 U.S.C. § 1973c (1988).

Commission, notwithstanding its experts, fixed its efforts on accomplishing the task rather than showing the community at large how intelligent a team could be brought together. The work of these experts largely corresponded to the initiatives that were developed through public hearings.

As for other staff, on which the Commission's credibility would depend, they consisted of persons who had community experience. The staff and advisors were chosen with an appreciation for the kind of diversity that was critical to the Commission and its work.

B. Dealing with Incumbency in the Districting Process

One of the most controversial policy decisions that had to be dealt with was the extent to which incumbency would be a factor in the redistricting process. The Council members and leadership sought a minimum amount of change. Within this concern was the question of how minority incumbents would be treated in the process. As the Charter was silent as to the "appropriate" measure of attention these matters would be accorded,³⁴ it became a personal issue for many members of the Commission. The desire for stability and continuity of representation had to be balanced by the requirements of change, and the process had to evolve as philosophical positions began to give way to the need to actually reach a workable consensus.

Difficulties arose because many of those with input to the process, but not with decision making authority, confused issues of the candidate's rights and voters' rights. The Commission made an early commitment to voters' rights in general and to the empowerment of the most seriously under-represented communities in particular. It did so because of the requirement of the New York City Charter³⁵ and the Voting Rights Act.³⁶ Although some members of the Commission went along with that position because they believed in it, others had to brought along because the charter required it. Not all mounted the learning curve and those that mounted it did not all do so at the same time. That commitment would clearly cause anguish among many incumbents and many interested parties. Some incumbents and interested parties appeared to understand this outcome while others found the results less appealing. Even the *New York Times* sounded a cautionary note, urging incumbency protection to be accorded an enhanced entitlement,³⁷ even if one could not be found among the several ranked criteria listed in the Charter.³⁸

In several instances, major incumbency issues were raised. In two of these cases particularly strong allies of Council Speaker Peter Vallone, Council Member Jerry Crispino of the Bronx and Council Member Joseph Lisa had to be placed

34. CITY CHARTER ch. 2-A, § 52.

35. CITY CHARTER ch. 2-A, § 52.

36. 42 U.S.C. §§ 1971-74 (1988).

37. See *Voting Vengeance*, N.Y. TIMES, July 30, 1991, at A2, stating that, "New York City's Districting Commission was chided last week for a racial gerrymander that denied a white incumbent a chance to run in her current minority area. It now has replaced the gerrymander with new lines that can only be designed to punish the incumbent, Susan Alter, for having complained." While acknowledging that the Commission had no legal obligation to respond to Ms. Alter's complaints, the editorial nonetheless labelled the Commission's action "shameful."

38. CITY CHARTER ch. 2-A, § 52.

in districts where their positions were in jeopardy. The Voting Rights Act clearly mandated this result.³⁹ Still, the Speaker held the political power to derail the process. He chose not to, agreeing that the law had to be given priority. He agreed to abide by the legal judgment of the Commission. The two Council members did not run for reelection while the Speaker demonstrated real leadership at a critical point in the process.

In other instances, as with Council Member Susan Alter, a particularly important political balance by districts created in the remainder of Brooklyn resulted in severe adjustments to the district that she formerly represented. In this situation, the incumbency of one Council member was deemed less important than a compromise which gave Voting Rights Act protection to districts where minorities resided, and saw accommodation with the rest of the borough's council members.

The issue of incumbency protection reduced itself to the question of whether the Commission was creating fifty-one districts, or sixteen "new" districts. Ultimately, the Commission grew comfortable with the perspective of "districting" from scratch as opposed to "redistricting" to accommodate new members. On the other hand, the Commission did not go out of its way to disregard prior district lines. After all, the thirty-five council members were the elected representatives of the former districts. The theory that emerged saw the commission as not adjusting thirty-five district lines "down" and plugging in new districts where there was space. The view that emerged saw the Commission creating fifty-one new districts.

The Commission had to reach a delicate balance, a balance between the duty it owed to the public, as provided in the Charter,⁴⁰ and the political expectations of the council members, many of whom were not opposed to the concept of redistricting as long as it essentially preserved "their" district lines. For most of the Commissioners, this was a learning process, and one that evolved throughout the Commission's existence. In the end, only after the requirements of the Voting Rights Act were satisfied, and the concerns of the under-represented were weighed, did the Commission consider, as was its legal right,⁴¹ incumbency.

C. Public Hearings and Open Process

Another significant policy decision of the Commission was to provide a large amount of openness and sharing of its resources with the public. This unprecedented accessibility has already been followed by others. Indeed, it affected the way reapportionment was done in New York State. As a response to New York City's experience, the State Commission scheduled hearings throughout New York State during its recent reapportionment, and some modest gains of input by citizens occurred.

As part of this process of openness, the Commission scheduled its twenty-seven public hearings so that it could receive public response at each stage of the districting process. The Commission also held hearings prior to the initial

39. 42 U.S.C. § 1971 (1988).

40. CITY CHARTER ch. 2-A, § 51.

41. See e.g., *White v. Weisler*, 412 U.S. 783, 791 (1973); *Burns v. Richardson*, 384 U.S. 73, 89 n.16 (1966).

plan, primarily to get a sense of how communities defined themselves. It also held hearings between the time of its initial plan and the Commission's release of its revised plan two weeks later. Again, the Commission held hearings after it released its revised plan and after it released its final plan on June 6, 1991. Every revision in the plan incorporated some comments or criticisms that were expressed during this hearing process. The Commission held twenty-seven hearings, almost four times the number required under the revised Charter.⁴² Additionally, the Commission's representatives and community liaisons attended over 500 meetings with community organizations to explain the process and how it affected those organizations and their members. The Commission sought the organizations' participation because it earnestly wanted to know what they thought and to have their opinions available as it formulated the plan.

D. Activity of All Commissioners

The Commission's notion of "fairness" also required that each Commissioner play an active role in the process. Every Commissioner had the kind of access that one would desire and expect from someone charged with producing a plan. All Commissioners were invited to, and actually did use the computers to develop the type of plans that they thought fair. They shared and accessed the same data, and just as importantly, each Commissioner had access to the technical personnel who utilized the computer programs and the data to create districting alternatives. The Commission decided early on that its members would physically draw the plan. While it gave some deference to the borough from which particular Commissioners came, for purposes of convenience, the hierarchy of the Commission was flattened as all members were invited to participate in every group activity. While Commissioners who dissented might not have liked the results, they could not legitimately complain that they were unable to present their viewpoint.

The Commission had an extremely novel policy of allowing public access to all of its computer capability. As noted above, the Commission actively sought public input and very seriously considered it. The Commission provided a "public access terminal" computer station ("P.A.T.") and provided computer personnel to assist any member of the public that desired to use this service. The Commission also made data available to the public, including the census data, almost as soon as the Commission received it. This was done at the lowest price possible, usually only the cost of the computer disks onto which the data was copied. The P.A.T. was housed in the City University Center Graduate Center in mid-town Manhattan. Indeed, most of the plans that the Commission received from the public to consider were generated on its machines and based upon the Commission's census and other data.

Finally, the chair felt that the Commission could develop and maintain a policy of never ending a public hearing until everyone who signed up to speak had the opportunity to be heard. A quorum was always present to start Commission hearings, although it was not required.⁴³ Occasionally at 2:00 a.m.

42. CITY CHARTER ch. 2-A, § 51(a).

43. CITY CHARTER ch. 2-A, § 51(b).

members of the Commission would still be listening to people's opinions about what they thought should be done with their particular community or neighborhood. The Commission had over 1,500 pieces of testimony from these hearings alone. Some were submitted in document form, while most were received orally as testimony. In sum, the openness and access were important aspects of the Commission's policy of fairness. This was not only because it wanted a fair result, but also because the Commission wanted to increase the participation of people in the political process. Raising the level of public participation remains an important part of the political legacy of the Commission's work. It remains incorporated in the product of the Commission, its final districting plan, as well.

V. CRITICAL ISSUES OF POLITICAL EMPOWERMENT

The first "critical" issue in the districting process was what is usually known in political science as a "non-event." That non-event was that neither the Mayor nor the City Council interfered in the direct workings of the Commission. Of course, both the Commission's leadership and individual members received telephone calls attempting to have a boundary drawn in a particular fashion or to influence the Commission in some other way. The influence of mayoral representatives and council members was almost entirely limited to an extent not before recognized in the City's local redistricting experience. The Commission was left to its own devices, and it alone was responsible for the results achieved. The structure provided in the New York City Charter,⁴⁴ and the Commission's authority to adopt the lines allowed those results to occur. Of course, the results angered several of the council members who insisted that they somehow had the right to define the boundaries of their own district. However, because they could not point towards legal authority to force the Commission's hand in that manner and they lacked political authority as well, the Commission did not respond as they would have liked.

The most controversial aspect of the Commission's work did not involve those white incumbents who argued that the Commission was undertaking a form of reverse discrimination. Rather, it was the issue of political competition among minorities. The most troubling aspect for the Commission was that many in the minority community viewed the work as a numbers game and saw only the "big picture." For example, the Hispanic community leaders urged that as almost a quarter of the city's population, they should have twenty-five percent (or thirteen seats) of the Council's membership. The reality of the situation was much more complex and included issues of patterns of geography and integration, citizenship rates, voter turnout rates, specific ethnic subgroups within the larger minority categories of "Black," "Hispanic," and "Asian," and even the census undercount.

One of the biggest obstacles for the Hispanic community leaders to overcome before they accepted the districting plan was the number of districts allotted to the African American community. The under-representation of Hispanics, who account for approximately twenty-four percent of the city's population, occurred basically because of demographics. The Hispanic community is significantly more geographically dispersed than the African-American community, who are roughly

44. CITY CHARTER ch. 2-A, § 50.

twenty-five percent of the population in New York City. This meant that it was more difficult for the Commission to create "Hispanic majority" districts than it was to draw corresponding African-American districts. The line drawing around Hispanic districts resulted from the Commission's attempts to create strong Hispanic districts.

Nine Hispanic Council members were elected as compared to twelve African-Americans. The reason greater geographic dispersal resulted in fewer Hispanic than African-American representatives, although the population size was roughly equivalent, was because the rules of the Charter bound the Commission. The rules specifically state that the Commission must work within a single-member district system. A single-member district system is geography-based and resulted in less electoral opportunity for Hispanics than for Blacks, who could be found in greater concentrations on the Commission's maps.

The situation was more difficult for the city's most dispersed minority group — Asian-Americans. With seven percent of the city's total population, simple mathematical application of a formula would mean at least three council seats. Still, issues of citizenship, voting age and geographic dispersal made it impossible for even one Asian-American district to be created.

Another problem in the creation of heavily Hispanic or Asian districts is that many members of these communities are not, as relatively new emigrants to the United States, citizens of the United States. Thus even where the Commission could draw strong Hispanic districts at the voting age population, as it did in the county of Queens, when the district was analyzed at the "estimated registered voter" level, the possibility of electing a minority candidate of choice dropped precipitously.⁴⁵

45. For example, past elections in New York City had shown that a minimum of 80% combined minority total population in a council district was required before a minority candidate would be elected. As originally drawn, District 21 in the borough of Queens had a combined Black, Hispanic and Asian population less than 80%. The Districting Commission was concerned that despite coming close to the 80% minority population threshold, the minority community of District 21 would not be able to elect a candidate of its choice. Coupled with this concern was the fact that in District 21, containing the communities of Corona, Jackson Heights and East Elmhurst, large concentrations of non-citizen Hispanics resided. High proportions of non-citizens meant simply that "extra" minorities would have to be included to avoid dilution of the Hispanics' voting strength. Accordingly, the Commission included a heavily Black housing complex in the final version of that plan. In an effort to create a true minority district which would possibly elect a Black rather than have a purportedly Hispanic district that would probably elect a white, the commission increased the number of minorities by reducing the proportion of Hispanics and increasing the proportion of Blacks between the May 16 revised draft plan and the June 3 final plan. The Commission accomplished this increase by including the heavily African-American housing development called Lefrak City. The result was a district with the non-minority registered voter percentage at 30.3% rather than 36.3%. The Commission assumed, as the data suggested, that African-Americans are generally more politically cohesive with Hispanics than with non-minorities. Thus, the Commission designed a district it thought would best reflect the political opportunity of the minority communities in that district.

Hispanic groups were displeased with the final district as drawn, and made their displeasure known to the Justice Department. These groups argued that such a move resulted in a dilution of the otherwise secure minority district. The Justice Department agreed with Hispanic organizations that this was a dilution of the Hispanic vote in Queens. Accordingly, the Commission adjusted the district to look more like the one presented in its May 16, 1992 revised plan. In the Commission's final plan, District 21 contains a Hispanic voting age population of 53.2%, although its Hispanic estimated voter registration is only 24.5%. In this particular district, however, a Black candidate was elected to the Council.

Interestingly, although somewhat disheartening, one of the strongest barriers to Hispanic representation on the Council was that community's own leadership both inside and outside of the Commission. Some of the Hispanic leaders' goals often conflicted with the stated goals of the Commission. This conflict worked against securing representatives for the Hispanic community. This leadership conflict along with geographic dispersal resulted in the Hispanic community electing seventeen percent of the Council even though they represent twenty-four percent of the city's population.

Paradoxically, the Charter requirement that the composition of the Districting Commission closely parallel the racial and ethnic diversity of the city's population⁴⁶ provided an additional problem for the Commission.⁴⁷ In practice, the Charter required that if a person was chosen as a member of the Commission and was Hispanic, Black or Asian, that person was chosen as a Hispanic, Black or Asian Commissioner. This implied that a minority Commissioner was an advocate for a particular racial or ethnic group, and sent the message that non-minorities or even other minorities should keep their "hands off" the Commissioner. This problem of "selective representation" is a much larger societal issue of course, but at the more basic level of the work of a commission, its negative effects can be devastating. The question can be posed as follows: When we have selected representation on a political body, are we then excusing the rest of the Commissioners from representing all citizens and excusing them from that area of involvement? That could have been a difficult issue for the Commission. Over time, involvement of every Commissioner on every issue became the norm. All the Commissioners represented all of city's diverse residents, and the Commission would create the type of plan that reflected that belief.

When an Hispanic representative argued, for example, that three "safe" Hispanic districts were all that could be drawn, and the bulk of the Commission thought that the numbers said that it could create four, the Commission did not give a preference to her argument. Most of the Commission was committed to, indeed viewed as a duty, fair representation. Here, the concept of fairness and representation outweighed the importance of constituency and who appointed the Commission. Just as society would not benefit from a United States Supreme Court Justice that forever remembered who it was that appointed her to the Court, the Commission would not benefit from those who remained too loyal to their personal interests or the interests of their sponsors.

The second set of issues for the Commission to define, beyond its responsibilities under the Voting Rights Act, were certain political rights. The Voting Rights Act secures rights for those people who are entitled to representation.⁴⁸

46. CITY CHARTER ch. 2-A, § 50(b)(1).

47. On August 3, 1992, Judge Mary Johnson Lowe of the United States District Court for the Southern District of New York declared unconstitutional and void the City Charter provision requiring the racial composition of the Districting Commission to reflect the city's racial and ethnic diversity. Judge Lowe based her ruling on the grounds that the measure is too rigid, has no expiration date, and harms innocent people who might be precluded from serving on future districting commissions. *Ravitch v. City of New York*, 90 Civ. 5752 (S.D.N.Y.). The ruling has no effect on the results of the 1991 elections that occurred under the 1990 Districting Commission's council lines since the plaintiffs, at the commencement of their action, indicated their opposition to the Charter *requirements* and not to the members who were chosen pursuant to it.

48. 42 U.S.C. § 1971(a)(1) (1988).

The question for the Commission was how to provide representation for those under-represented communities who do not have enough population to form single member districts, but who are nonetheless entitled to protection under the philosophy of the Voting Rights Act and its ethos. The notion of minority "influence" districts had, at the time of the Council districting, been answered differently by different federal circuit courts.⁴⁹ However, in the Second Circuit, the issue was open.

The Commission answered the question by adopting a policy of maintaining communities of similar ethnic, racial, economic, and "other" traits together. It went beyond affording that protection to only those categories enumerated in the Voting Rights Act.⁵⁰ That policy meant that the Commission was not only sensitive to Brooklyn's black population, but to the Caribbean blacks whose political aspirations did not always coincide with those of the American Blacks. Thus, the Caribbean black community now has a representative of its choosing on the City Council. Additionally, the Commission did not only pay attention to Hispanics in general, but also to upper Manhattan's Dominicans, who also for the first time have a representative on the Council.

The policy also meant paying attention to the gay community, which had never had representation on the Council. Currently, two members of the City Council are openly gay, including one that ran on a platform specifically targeted to the special political needs of the gay community. The Commission also kept the clusters of Orthodox Jews together. Nothing in the law mandated that the Commission weigh such considerations and make these decisions. However, the communities came to the hearings and voiced their concerns. They presented data to sustain their positions. The Commission districted them together for reasons that had to do with their empowerment and entitlement. Putting aside the issue of whether or not they benefitted from the representation that they ultimately received in the 1991 election, their testimony was listened to and the Commission responded.

Another issue was that of "open" districts: in which areas should the Commission concentrate those districts in which no incumbent resided, largely due to the increase in the number of Council seats? The Commission realized that incumbency would be an important factor in who was elected in what districts, and determined to create as many open districts as possible for minority citizens to elect candidates of their choice. Seventeen open districts resulted from the increase in the size of the Council and incumbents deciding not to run for reelection. Of those seventeen districts, twelve were created in predominantly minority areas with the desire of having those "minority districts" elect candidates of their choice.

49. See *Armour v. Ohio*, 775 F. Supp. 1044 (N.D. Ohio 1991); Cf. *McNeil v. Springfield Park District*, 851 F.2d 937 (7th Cir. 1988); *Latino Political Action Committee v. City of Boston*, 784 F.2d 409 (1st Cir. 1986); *Skorepa v. City of Chula Vista*, 723 F. Supp. 1384, 1391 (S.D. Cal. 1989); *East Jefferson Coalition v. Parish of Jefferson*, 703 F. Supp. 28, 30 (E.D. La. 1989); *Martin v. Allain*, 658 F. Supp. 1183, 1204 (S.D. Miss. 1987).

50. The Voting Rights Act protects persons whose right to vote is denied or abridged "on account of race or color, or in contravention of the guarantees set forth in § 1973b(f)(2) of this title," which protects members of language minority groups. 42 U.S.C. § 1973a (1988).

One pleasant and unexpected pattern that emerged from the 1991 Council election was the changes in voting patterns. Interestingly, prior to the 1991 election, no minority council member had ever been elected from a district that was less than 80% "minority." The "80% rule" held true of every minority member on the City Council until the election of November of 1991. After that election, the Council had four minority members that were elected from districts with less than 80% minorities. This result reflects new coalition building, increased minority electoral participation and expanding cross-racial electoral support.

Coalition building was also something the Commission considered and tried to encourage. However, the Commission's work spurred various court cases; three lawsuits in particular played a critical role in this attempt to bring people together. Conversely, the actions raised divisive issues that fostered hostility and created political rifts as well.

In *Alter v. The City of New York*,⁵¹ the picture painted by some was of Caribbean blacks versus Orthodox Jews, with the Commission fanning the hostility between the two communities.⁵² However, the Commission tried to do what would most likely result in an overwhelmingly Black Caribbean community being able to choose a candidate of its preference. The Commission created an open minority district, and placed the only two Orthodox Council members, who lived several blocks apart, in the same district. The media and the Department of Justice⁵³ viewed it as a type of reverse discrimination. The Commission was asked why it moved a Jewish Orthodox Council member from "her" district to another district where she would have had to run against another Orthodox Jew, who was a man. In fact, the Commission did not "move" any incumbent from one district to another. The Commission created minority districts first, with the result that these particular incumbents ended up in the same district. Further, several members of the Commission seeking the opportunity to create an open district desired just that result. It was a reasonable political position to take, and the Commission had the responsibility to enhance minority representation. The main concern of the Commission was not that of the incumbents, but that of voter empowerment. It was not simply political horse trading at the expense of the rights of any voter.⁵⁴

51. No. 91-2232 (E.D.N.Y. filed June 19, 1991).

52. The two other lawsuits which raised issues of voting rights in the context of race were *Puerto Rican Legal Defense and Education Fund v. City of New York, et al.*, No. 91-2026 (E.D.N.Y. filed June 7, 1991) and *Broad Channel Civic Ass'n, Inc. v. New York City Districting Comm'n*, No. 18756/91 (Sup. Ct. N.Y. Co. filed August 13, 1991).

53. In the Department of Justice's initial letter to the Districting Commission objecting to the final plan, Assistant Attorney General, Civil Rights Division, John R. Dunne wrote:

Finally, I feel compelled to comment on one factor that may have played a significant role in drawing some of the districts (particularly District 45). According to published reports, the Commission believed that to obtain preclearance for the districting plan, it was required by the Department of Justice policy to remove current Council members from any district in which minorities comprise a majority of the population, unless that incumbent also was a member of the same minority. The proposition that only minority officeholders may effectively represent a minority constituency does not accurately state the law or the policy of the Justice Department.

Letter from Assistant Attorney General, John R. Dunne, to Judith Reed, General Counsel to the Commission (July 19, 1991) (on file with author).

54. As it turned out, Council Member Alter was able to run in the district she wanted to as a result of a ruling in another lawsuit, *Puerto Rican Legal Defense and Education Fund v. City of New York, et al.*, No. 91-2026 (E.D.N.Y. filed June 19, 1991).

In the Bronx, as discussed previously, another critical question for the Commission was whether to create three "safe" Hispanic majority districts or to divide that same population into four Hispanic majority districts that could work if the voters turned out to vote. The data suggested that four candidates of choice could be elected if the Hispanic community got out and voted.⁵⁵ However, several Commissioners argued for three safe districts. When the entire Commission went through the process as it had done prior to creation of this district, clear results emerged that would most empower the Hispanic community, at least numerically.

The process involved more than just allowing the data to speak for itself. It also included convincing the neutral Commissioners that to treat the Hispanic community in the Bronx any other way would not only be patronizing, but "disempowering." The leadership of the Commission also had to be convinced. That turning point came when a Commissioner pointed out that he could not in "good conscience" accept three Hispanic districts when four were a very real possibility. That was a very persuasive reaction for several members of the Commission, because it demonstrated the existence of a coalition committed to doing what was right and fair. That sense of fairness was not based upon the existing political power structure. Rather, it was based on what the Commission was required to do under the Voting Rights Act⁵⁶ and the New York City Charter.⁵⁷ Ultimately, creating four Hispanic majority Council districts was the only justifiable political response. Indeed, four Hispanics were elected from those districts in the 1991 Council elections.

At the end of the process, the final vote on the plan the Commission adopted was eleven in favor and four against. The vote reflected the coalition building on the Commission. All three of the Republican Council appointees voted for it. The Commission was not required to create "Republican" districts, but geographic clusters and patterns allowed the Commission's work to have that result. After the election five Republicans, ten percent of the membership, were elected to the body. Of the mayoral appointees, five supported the plan while two voted against it. Of the Democratic Council appointees, three voted for it while two voted against it. One member voted against it based on what he regarded as the plan's major shortcoming and as a fatal flaw: lack of geographic compactness. The coalition that formed and held together was as a rare one indeed, ranging from a member of the Conservative Party to liberal Democrats. It was a most improbable coalition for a districting plan. Their interest in fair results and just empowerment unified them.

VI. CONCLUSION

A discussion concerning districting in New York City could have touched on a number of issues. It could have touched upon a role for political parties in

55. Indeed, coupled with the technology to maneuver it, the data was extremely helpful in resolving some of the more difficult district drawing, such as the Latino districts in upper Manhattan and Queens and the Black districts in Brooklyn, as well as not creating a "Black" district linking Coney Island and Staten Island.

56. 42 U.S.C. § 1971 (1988).

57. CITY CHARTER ch. 2-A, § 52.

the Council. It could have discussed the concept of single-member districts and why they present an especially difficult challenge for empowering minorities. It could have dealt with at-large seats and proportional representation. Each of these discussions would present some kind of solution to the issue of increasing the power of minorities. But that was not the authors' purpose. Having experienced districting on a first hand basis, our challenge was to discuss some realities of the system as it is and to discuss how the districting process, within the structure that exists, could advance the cause of minorities who are not yet fully a part of the political system. We wanted, as well, to shed some light on basic issues: (1) the organization of the Commission; (2) the role for its members; (3) the development of a working organization; and (4) its focus upon important issues, fairness and the New York City Charter requirements.

The districting process inherently involves questions of justice. The work of the Commission was to evaluate the common goals of the represented and interested parties, and to foster policies and decisions that emphasized these common goals. Primary among these goals and policies was representation for the traditionally under-represented or unrepresented. The Commission focused on its task, and was faithful to the constitutional, federal and local requirements. It also exhaustively examined issues on a case-by-case basis. Pursuing that course allowed the process to evolve as it did, and resulted in the creation of a "fair" plan, reflecting the Commission's commitment and hard work. It demonstrated that policy implementation can be faithful to principles.

APPENDIX

CHAPTER 2-A

DISTRICTING COMMISSION

- §50. Districting commission; composition; appointment; terms; vacancies; compensation.
- § 51. Powers and duties of the commission; hearings; submissions and approval of plan.
- §52. District plan; criteria.
- §50. Districting Commission; composition; appointment; terms; vacancies; compensation.** a. There shall be a districting commission consisting of fifteen members appointed as provided in this section.
1. The council delegation of the political party which has the largest delegation in the council shall, by majority vote, appoint five members of the commission, no more than one of whom may be a resident of the same borough.
 2. The council delegation of the political party which has the second largest delegation in the council, shall, by majority vote, appoint three members of the commission, no more than one of whom may be a resident of the same borough.
 3. If only one political party has a council delegation, then the chairpersons of the county committees of the political party with no council delegation which, at the time of the general election last preceding the time at which such appointments are required to be made, had the largest number of enrolled voters in the city, shall each submit three nominations to the mayor, in order to provide a list of fifteen nominations from that party. The mayor shall appoint three members from such list, no more than one of whom may be a resident of the same borough.
 4. The mayor shall appoint seven additional members, but the party enrollment, if any, of these additional members shall be such that individuals enrolled in a single political party shall not be a majority of the total number of members of the commission.
 5. Officers and employees of the city or any city agency, lobbyists required to file a statement of registration under federal, state or local law, the employees of such lobbyists, federal, state and local elected officials, and officers of any political party shall not be eligible to be members of the commission.
 6. The members of the commission shall elect one of the fifteen members to serve as the chair of the commission.
 7. For purposes of this section, a member of the council who was elected to the council upon the nomination of more than one political party shall be considered to be a member of the council delegation of

the political party on whose ballot line he or she received the largest number of votes in his or her last election to the council.

b. 1. The commission shall have among its members (a) at least one resident of each borough, and (b) members of the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended, in proportion, as close as practicable, to their population in the city.

2. The mayor, no later than twenty-two months before the general election of the council to be held in the year nineteen hundred and ninety-three, and every ten years thereafter, shall convene one or more meetings of all of the appointing and recommending authorities specified in subdivision a of this section for the purpose of establishing a screening and selection process for ensuring that the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended, will be fairly represented on the commission.

c. Each council delegation authorized by subdivision a of this section to make appointments to the commission shall make such appointments no earlier than one year and eight months before, and no later than one year and six months before, the general election of the council to be held in the year nineteen hundred ninety-three, and every ten years thereafter. In any case in which the chairpersons of the county committees of a political party are authorized to submit nominations to the mayor, such nominations shall be submitted no earlier than one year and eight months before, and no later than one year and six months before, the general election of the council to be held in the year nineteen hundred ninety-three, and every ten years thereafter. The mayor shall make appointments to the commission after each council delegation authorized to make appointments has done so but no later than one year and five months before such a general election of the council. The commission's term shall end upon adoption of a districting plan, as set forth in section fifty-one.

d. In the event of a vacancy by death, resignation or otherwise, a new member enrolled in the same political party from which his or her predecessor was selected shall be appointed in the same manner as the member whose departure from the commission created the vacancy to serve the balance of the term remaining.

e. No member of the districting commission shall be removed from office except by the person or persons who appointed such member and only for cause and upon notice and hearing.

f. The members of the commission shall serve without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.

g. The commission may hire or contract for necessary staff assistance and may require agencies of city government to provide technical assistance. The commission shall have a budget as provided by the mayor.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.

§ 51. Powers and duties of the commission; hearings; submissions and approval of plan. a. Following each decennial census, the commission shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the commission shall be guided by the criteria set forth in section fifty-two.

b. The commission shall hold one or more public hearings not less than one month before it submits its plan to the city council, in accordance with subdivision c of this section. The commission shall make its plan available to the public for inspection and comment not less than one month before the first such public hearing.

c. The commission shall submit its plan to the city council not less than one year before the general election of the city council to be held 1 year by general election in the year nineteen hundred ninety-three and every ten years thereafter.

d. The plan submitted in accordance with subdivision c of this section shall be deemed adopted unless within three weeks, the council by the vote of a majority of all of its members adopts a resolution objecting to such plan and returns the plan to the commission with such resolution and a statement of its objections, and with copies of the written objections of any individual members of the council who have submitted objections to the speaker prior to such date. Any objections from individual members submitted to the speaker by such date shall be transmitted to the districting commission whether or not the council objects to such districting plan.

e. Upon the receipt of any such resolution and objections, the commission shall prepare a revised plan and shall, no later than ten months before such general election of the city council, make such plan available to the council and the public for inspection and comment. The commission shall hold public hearings and seek public comment on such revised plan.

f. Following its consideration of the comments received pursuant to subdivision e of this section, the commission shall, no later than eight months before such general election of the council, prepare and submit a final plan for the redistricting of the council.

g. Notwithstanding the provisions of subdivision d or subdivision f of this section, no plan shall be deemed adopted in accordance with either of such subdivisions until the commission files, with the city clerk, a copy of such plan and a statement signed by at least nine members of the commission certifying that, within the constraint of paragraph a of subdivision one of section fifty-two, the criteria set forth in the other paragraphs of such subdivision have been applied in the order in which they are listed and that such criteria have been implemented, in such order, to the maximum extent practicable. Such certification shall also set forth the manner in which the commission implemented the requirements of paragraph b of subdivision one of section fifty-two. Such plan shall be deemed adopted upon the commission's filing with the city clerk of such plan and such certification.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.

§ 52. **District plan; criteria.** 1. In the preparation of its plan for dividing the city into districts for the election of council members, the commission shall apply the criteria set forth in the following paragraphs to the maximum extent practicable. The following paragraphs shall be applied and given priority in the order in which they are listed.

a. The difference in population between the least populous and the most populous districts shall not exceed ten percentum (10%) of the average population for all districts, according to figures available from the most recent decennial census. Any such differences in population must be justified by the other criteria set forth in this section.

b. Such districting plan shall be established in a manner that ensures the fair and effective representation of the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended.

c. District lines shall keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other.

d. Each district shall be compact and shall be no more than twice as long as it is wide.

e. A district shall not cross borough or county boundaries.

f. Districts shall not be drawn for the purpose of separating geographic concentrations of voters enrolled in the same political party into two or more districts in order to diminish the effective representation of such voters.

g. The districting plan shall be established in a manner that minimizes the sum of the length of the boundaries of all of the districts included in the plan.

2. Each district shall be contiguous, and whenever a part of a district is separated from the rest of the district by a body of water, there shall be a connection by a bridge, a tunnel, a tramway or by regular ferry service.

3. If any district includes territory in two boroughs, then no other district may also include territory from the same two boroughs.

HISTORICAL NOTE

Amended at General Election, November 7, 1989.